Supreme Court, U.S.
FILED
DEC 14 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2268

In the Supreme Court of the United States

OCTOBER TERM, 1982

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL.,
APPELLANTS

v.

TAXATION WITH REPRESENTATION OF WASHINGTON

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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APPEAL DOCKETED JUNE 22, 1982
PROBABLE JURISDICTION NOTED OCTOBER 4, 1982

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RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1978		
May		
	10	COMPLAINT; appearance.
May	10	SUMMONS (4) and copies (4) of complaint issued U.S. Atty. ser 5-12-78; Deft. #1 ser 5-24-78. #2 ser 6-12-78.
May	24	AFFIDAVIT of service by counsel for pltff., of summons and complaint upon the Atty Gen. by certified mail on May 11, 1978; Exhibit.
Jul	10	STIPULATION and ORDER extending time to 8-10-78 for defts. to respond to the complaint. (N) Pratt, J.
Aug	10	ANSWER by Defts. to Complaint; Appearance of Robert L. Gordon.
Aug	10	*CALENDARED* (CAL/N)
Aug	11	MOTION by Pltff. for Summary Judgment; P & A; Table of Contents; Table of Authorities; Affidavit; Attachment; Statement.
Aug	23	STIPULATION and ORDER filed Aug. 18, 1978 extending time to 9-29-78 for defts. to respond to motion for summary judgement. (N) Pratt, J.
Sept	27	MOTION by defts. for extension of time to file opposition to pltff's motion for summary judgment and cross-motion for summary judgment.
Oct	2	ORDER filed Sept. 28, 1978 granting motion of deft. for extension of time to file opposition & cross-motion from 9-29-78 to 10-16-78. (N) Pratt, J.
Oct	16	MOTION by defts. for leave to exceed 35 page limit in memorandum in support of their cross-motion to dismiss complaint; Exhibit (orig.)
Oct	17	MOTION by defts. for leave to file corrected copy of memorandum in support of cross-motion for summary judgment; Exhibit (orig.)
Oct	18	MOTION by defts. for leave to exceed 35 page limit in memorandum in support of their cross-motion to dismiss complaint. "Let this be filed." (FIAT) Pratt, J.
Oct	18	CROSS-MOTION by defts. for summary judgment; statement; memorandum.
Oct	20	ORDER filed Oct. 19, 1978 granting motion of defts. for leave to file the attached corrected copy of their memorandum in support of their cross-motion for summary judgment with table of citations. (N) Pratt, J.

DATE	NR.	PROCEEDINGS
Oct	19	CORRECTED copy of memorandum by defts. in support of cross-motion for summary judgment; table of contents.
Oct	24	RESPONSE by pltffs. to defts. statement of material facts.
Oct	24	REPLY Memorandum by pltffs. in support of its motion for summary judgment, and in opposition to defts. cross-motion for summary judgment; table of contents; table of authorities; appendix A, B, C & D.
1979		
Jan	31	MEMORANDUM OPINION (N) Pratt, J.
Feb	1	ORDER filed Jan. 31, 1979 denying motion of pltff. for summary judgment and granting motion of deft. for summary judgment and dismissing action. (N) Pratt, J.
Mar	27	NOTICE of appeal by pltf. from order of 1-31-79. $5.00 paid and credited to U.S. Treasury; copies mailed to John J. McCarthy, and Earl J. Silbert.
May	7	RECORD on Appeal delivered to USCA; Receipt acknowledged. (79-1464)
1981		
June	18	COPY ORDER U.S.C.A. filed 6-11-81 granting *en banc* hearing.
1982		
Apr.	09	CERTIFIED copy of Judgment filed 3-26-82 in USCA REVERSING and REMANDING to the District Court for further proceedings consistent with the opinion of this Court. OPINION. (USCA#79-1464)
Apr 13		TRANSMITTAL letter from USCA with 1 volume original record.
Apr 29		COPY of ORDER filed Apr. 29, 1982 in USCA directing Clerk, USDC to return the mandate issued on Apr. 8, 1982. (mandate returned to USCA on 5-12-82)

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

DATE	FILINGS—PROCEEDINGS	Filed
(D)5-7-79	Certified Original Record (1 vol.) (n-2)	
(D)6-8-79	4-Appellant's motion to extend time to file brief to 7-18-79 (m-8)	
(E)6-13-79	Clerk's order granting appellant's motion to extend time to file brief to July 18th	
(D)7-12-79	4-Appellant's motion for leave to file motion to extend time to file brief (m-12)	
(E)7-17-79	Clerk's order granting appellant's motion for leave to file motion to extend time to file brief and granting motion to August 1, 1979	
(E)7-17-79	4-Appellant's motion to extend time to file brief—granted	
(T)8-1-79	15-Appellant's brief (m-1)	
(T)8-1-79	7-Appendix (m-1)	
(D)9-5-79	15-Appellees' brief (m-4)	
(T)9-24-79	15-Appellant's reply brief (m-21)	
(T)3-7-80	Clerk's order, sua sponte, that the following times are allotted for oral argument: Appellant—15 minutes; appellee—15 minutes; only one counsel per side will be allowed to argue	
(T)3-10-80	4-Letter from counsel for appellant advising of additional authorities pursuant to Rule 28(j), FRAP (m-10)	
(E)3-18-80	Argued before MacKinnon, Robb* and Mikva, CJ's.	
(D)7-21-80	4-Letter from counsel for appellant advising of additional authorities pursuant to Rule 28(j), FRAP (m-18)	
(H)4-14-81	Judgment affirming the judgment of the District Court, and appellant's constitutional challenge to the IRS's denial of § 501(c)(3) status is rejected, all in accordance withe the Opinion for the Court filed herein this date. Vacated 6-11-81	
(T)04-22-81	1-Appellees' bill of costs (m-20)	
(T)04-28-81	15-Appellant's petition for rehearing and suggestion for rehearing en banc (m-28)	
(B)05-04-81	Clerk's order, sua sponte, that pursuant to Rule 43 of the F.R.A.P., the Clerk is directed to delete the name of W. Michael Blumenthal as a party appellee and to substitute therefore the name of Donald T. Regan	

DATE	FILINGS—PROCEEDINGS	Filed
(R)6-1-81	Per curiam order sua sponte, that the Opinion for the Court filed by Circuit Judge MacKinnon in this case on April 14, 1981 be and it hereby is amended as follows (see order for details)	
(C)06-11-81	Per Curiam order, en banc, that the majority opinion, dissenting opinion and judgment all entered 4/14/81 be and same are hereby vacated; The parties are directed to submit 25 additional copies of each brief previously filed and 25 additional copies of joint appendix, both no later then 7/30/81; Parties are further directed to submit 30 copies of a supplemental brief on rehearing containing argument based upon any new authorities, comment upon the panel opinion and further argument addressed to the following issues: (1) The appropriate standard of review; (2) Whether a distinction between veterans and fraternal societies, on the one hand, and other § 501(c)(3) organizations, on the other, is Constitutionally justifiable; The Supplemental briefs on rehearing shall be filed in accordance with the following schedule: Appellant—7/20/81; Appellees—8/31/81; Oral argument before the en banc Court will be heard on 10/14/81; CJ Robinson; Wright, McGowan, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, CJs (CJ Tamm, MacKinnon and Robb would not rehear this matter en banc)	
(G)07-21-81	25-Appellant's supplemental brief on rehearing en banc (m-20)	
(G)08-27-81	25-Appellees' supplemental brief on rehearing en banc (m-26)	
(G)10-05-81	Clerk's order, sua sponte, that the following times are allotted for the oral argument of this case: Appellant—25 minutes; Appellees—25 minutes.	
(G)10-14-81	Argued En Banc, before, CJ Robinson, Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, CJs	
(V)12-29-81	15-Letter from counsel for appellant advising of additional authorities pursuant to FRAP 28(j) (m-29)	
(S)03-26-82	Opinion for the Court filed by CJ Mikva	
(S)03-26-82	Dissenting opinion filed by CJ MacKinnon	
(S)03-26-82	Judgment that the judgment of the District Court is reversed and the case is remanded for further proceedings consistent with the opinion filed	
(S)04-08-82	Certified copy of judgment and copy of opinion issued to District Court	

DATE	FILINGS—PROCEEDINGS	Filed
(C)04-08-82	1-Appellant's bill of costs (m-7)	
(C)04-13-82	Receipt date 4/13/82 from Clerk, District Court for 1 vol. original record	
(C)04-16-82	4-Appellees' motion for stay of mandate (m-16)	
(C)04-23-82	15-Motion of Disabled American Veterans and Paralyzed Veterans of America for leave to intervene (m-23)	
(C)04-23-82	4-Notice of appeal to Supreme Court by Donald T. Regan, Sec. of Treasury, et al. (m-23)	
(C)04-23-82	4-Notice of appeal of Disabled American Veterans and Paralyzed Veterans of America (m-23)	
(V)04-29-82	Per Curiam order that appellees' motion for stay of mandate, construed as a motion to recall mandate, be, and it is hereby granted. The Clerk of the U.S. District Court for the District of Columbia is directed to return the mandate previously issued herein on April 8, 1982, as promptly as the business of his office permits and the Clerk of this Court is directed not to reissue the mandate herein for a period of 30 days from the date of this order; CJ Robinson, Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, CJs	
(C)04-30-82	11-Motion of American Legion to intervene and for expeditious determination of this motion (m-30)	
(C)05-03-82	15-Motion of Veterans of Foreign Wars of the United States for leave to intervene (m-3)	
(C)05-04-82	15-Corrected motion of Veterans of Foreign Wars of the United States for leave to intervene (m-3)	
(C)05-10-82	Per Curiam order, en banc, that the Clerk is directed to file appellees' letter dated 5/3/82 as a motion for leave to file a single response to any pending motions to intervene and appellees' motion to file a single response is granted. Counsel for appellees may file, on or before May 14, 1982, an original and 14 copies of a single response to any motions for intervention which are still pending at the time said response is tendered; CJ Robinson; Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards, and Ginsburg, CJs	
(C)05-10-82	1-Appellees' letter dated 5/3/82—filed as appellees' motion for leave to file single response to any pending motions to intervene—GRANTED per above order	
(C)05-14-82	15-Appellees' (Fed) opposition to motions for intervention (m-14)	

DATE	FILINGS—PROCEEDINGS	Filed
(T)05-17-82	4-Reply of Disabled American Veterans and Paralyzed Veterans of America to Appellees' opposition to motions for intervention. (m-17)	
(C)05-18-82	12-Reply of American Legion to appellees' (Fed.) opposition to motions for intervention (m-18)	
(T)05-25-82	15-Appellees' motion for further stay of mandate (m-25)	
(V)05-27-82	Per Curiam order that the motion of Disabled American Veterans, et al., American Legion, Veterans of Foreign Wars of the United States for leave to intervene are denied and the Clerk is directed to note the docket accordingly; CJ Robinson, Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, CJs	
(C)06-22-82	Copy of letter from Clerk, SC stating that "The motions of Disabled American Veterans and Paralyzed Veterans of American for leave to intervene as party appellants is denied. Motion of American Legion for leave to intervene as party appellee is denied. Motion of Veterans of Foreign Wars of the US for leave to intervene is denied. Justice Brennan, Justice Blackmun and Justice O'Connor would defer consideration of these motions to the docketing and consideration of the jurisdictional statement"—in SC No. (not stated on letter) on June 21, 1982	
(B)06-25-82	Notice from Clerk, Supreme Court that petition for writ of certiorari was filed on 06-22-82 in SC No. 81-2338	
(C)07-29-82	Notification from Clerk, SC that petition for writ of certiorari was filed in SC No. 82-134 on July 23, 1982	
(V)08-10-82	Per Curiam order, en banc, that appellees' motion for further stay of mandate is granted and the Clerk is directed not to reissue the mandate herein until final disposition of this matter by the Supreme Court of the United States; CJ Robinson, Wright, Tamm, MacKinnon, Wilkey, Wald, Mikva, Edwards and Ginsburg, CJs	
(T)10-06-82	Certified copy of order from Clerk, Supreme Court noting probable jurisdiction in Supreme Court No. 81-2338 on 10-04-82	

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 78-0834

TAXATION WITH REPRESENTATION OF WASHINGTON,
PLAINTIFF,
2369 North Taylor Street
Arlington, Virginia 22207
(703) 527-2605

v.

W. MICHAEL BLUMENTHAL,
SECRETARY OF THE TREASURY,
JEROME KURTZ, COMMISSIONER OF INTERNAL REVENUE,
AND
THE UNITED STATES OF AMERICA, DEFENDANTS.

COMPLAINT FOR DECLARATORY RELIEF

1. This is an action for declaratory judgment with respect to the initial tax exempt qualification of an organization described in section 501(c)(3) of the Internal Revenue Code ("the Code").

2. This Court has jurisdiction under 26 U.S.C. § 7428.

3. Plaintiff Taxation with Representation of Washington ("TWRW") is incorporated under the District of Columbia Non-Profit Corporation Act. Its principal office is located in Arlington, Virginia.

4. The defendants are W. Michael Blumenthal, Secretary of the Treasury, Jerome Kurtz, Commissioner of Internal Revenue, and the United States of America.

5. TWRW was formed on June 14, 1977, to absorb and carry forward the courtroom and legislative advocacy activities conducted by two other nonprofit organizations, Tax Analysts and Advocates ("TAA") and Taxation with Representation ("TWR").

6. TAA is classified by the Internal Revenue Service as a tax exempt charitable and educational group under section 501(c)(3) of the Code. It engages in public interest tax-

related litigation and publishes a weekly journal on federal tax matters. TWR is classified by the Internal Revenue Service as a tax exempt social welfare organization under section 501(c)(4) of the Code. It is principally engaged in representing the interests of ordinary taxpayers at legislative and administrative hearings.

7. Both TAA and TWR are financed through public contributions. In addition, TAA (but not TWR) is partly supported by publication receipts and foundation grants.

8. Under current law, contributions to TAA for its courtroom advocacy work are tax deductible, but contributions to TWR for its legislative advocacy are not. In addition, foundations may support the courtroom advocacy of TAA, but may not, *without penalty*, support the legislative advocacy of TWR.

9. The Internal Revenue Service ("IRS"), an agency of defendant United States of America, has ruled that TWRW does not qualify for exempt status under section 501(c)(3) of the Code. The IRS has rejected TWRW's request for exempt status under section 501(c)(3) of the Code solely because of TWRW's stated purpose of attempting to influence legislation.

10. On June 27, 1977, TWRW filed with the IRS a completed application for recognition of exeption under section 501(c)(3) of the Code. On October 6, 1977, the IRS requested additional information to complete its consideration of the application. This information was timely furnished to the IRS on November 1, 1977. The IRS denied recognition of exemption under section 501(c)(3) of the Code on November 25, 1977.

11. On December 13, 1977, TWRW filed a timely protest of the IRS denial and requested a conference on the exemption application with the IRS. On January 10, 1978, a conference was held between Thomas F. Field of TWRW and Edward K. Karcher of the Exempt Organizations Division of the IRS.

12. On February 14, 1978, the IRS issued a final adverse ruling denying TWRW exempt status under section 501(c)(3) of the Code.

13. TWRW has exhausted its administrative remedies.

14. If TWRW were exempt from federal income taxation under section 501(c)(3) of the Code, it would be eligible to receive contributions which would be tax-deductible to donors under sections 170(c)(2), 2055(a)(2), 2106(a)(2) and 2522 of the Code. Based on the experience of TAA and TWR, this means that individual contributions would be approximately 23 percent greater than otherwise. In addition, private foundations would be entitled to provide funds for the general support of TWRW's activities without incurring tax liability under Code section 4945(d)(5) as a result of their contributions. In practice, foundations will not make grants to TWRW if there is any possibility of incurring section 4945 tax penalties. TWRW's efforts to raise funds to support its activities are thus severely hampered by the IRS denial of section 501(c)(3) status.

15. TWRW would qualify for section 501(c)(3) status except for its stated purpose of attempting to influence legislation.

16. The denial of section 501(c)(3) status to TWRW on the ground that it may engage in substantial attempts to influence legislation is unconstitutional in the following respects:

(a) the restrictions on substantial attempts to influence legislation unconstitutionally abridge the freedoms of speech, association, and press, and the right of petition of TWRW and its members by conditioning the benefits of eligibility under section 501(c)(3) upon the surrender of such First Amendment rights and freedoms;

(b) the restrictions on substantial attempts to influence legislation deny TWRW and its members the equal protection of the laws, as guaranteed by the due process clause of the Fifth Amendment, since organizations which are similarly situated in relevant respects are, without regard to whatever attempts they make to influence legislation, granted tax benefits while comparable benefits are denied to TWRW;

(c) the restrictions on substantial attempts to influence legislation contained in section 501(c)(3) are unconstitutional on the ground of vagueness since they lack

the specificity required where a statute touches upon the exercise of First Amendment freedoms.

WHEREFORE, plaintiff prays that the Court declare (1) that defendants' denial of exempt status to plaintiff is improper since the denial is based on a statutory restriction which is unconstitutional, (2) declare that plaintiff is entitled to exempt status under section 501(c)(3) of the Code, and (3) grant such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/_____

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May 10, 1978

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 78-0834

TAXATION WITH REPRESENTATION OF WASHINGTON,
PLAINTIFF
2369 North Taylor Street
Arlington, Virginia 22207
(703) 527-2605

v.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury,
Washington, D.C. 20220
(202) 566-2000

JEROME KURTZ,
Commissioner of Internal Revenue,
Washington, D.C. 20224
(202) 783-8400

and

UNITED STATES OF AMERICA, DEFENDANTS
c/o United States Department of Justice,
Washington, D.C. 20530
(202) 739-3633

ANSWER

Defendants, through their attorneys, answer plaintiff's Complaint by alleging as follows:

1. Defendants deny that plaintiff is an organization described in Section 501(c)(3) of the Internal Revenue Code, but otherwise admit paragraph 1.

2. Defendants admit that jurisdiction is present, and aver that jurisdiction for a suit brought under 26 U.S.C., § 7428 is granted by 28 U.S.C., § 1346(e).

3. Defendants admit paragraph 3.

4. Defendants deny that W. Michael Blumenthal, Secretary of the Treasury, and Jerome Kurtz, Commissioner of Internal Revenue are proper defendants. Defendants aver that in a suit brought under 26 U.S.C., § 7428 pursuant to 28 U.S.C., § 1346(e), the United States is the only proper defendant.

5. Defendants admit that plaintiff was formed on June 14, 1977. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remainder of paragraph 5.

6. Defendants admit paragraph 6.

7. Defendants admit paragraph 7.

8. Defendants admit that under present law, contributions to Tax Analysis and Advocates ("TAA") are tax deductible, but contributions to Taxation With Representation ("TWR") for its legislative advocacy are not. Defendants also admit that foundations may support TAA, but may not, without penalty, support the legislative advocacy of TWR. Defendants otherwise deny paragraph 8.

9. Defendants admit paragraph 9.

10. Defendants admit paragraph 10.

11. Defendants admit paragraph 11.

12. Defendants admit paragraph 12.

13. Defendants admit paragraph 13.

14. Defendants admit the first and third sentences of paragraph 14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the second, fourth and fifth sentences of paragraph 14.

15. Defendants admit that based on the facts presented to them by plaintiff in its administrative application, plaintiff would have qualified for Section 501(c)(3) status at that time except for its stated purpose of attempting to influence legislation. Defendants otherwise deny paragraph 15.

16. Defendants deny paragraph 16.

WHEREFORE, defendants pray that judgment be entered in their favor and that this action be dismissed.

/s/
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 78-0834

TAXATION WITH REPRESENTATION OF WASHINGTON
PLAINTIFF,
6830 North Fairfax Drive
Arlington, Virginia 22213
(703) 532-1850

v.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury,
JEROME KURTZ, Commissioner of Internal Revenue, and
THE UNITED STATES OF AMERICA, DEFENDANTS

PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

1. Plaintiff Taxation with Representation of Washington ("TWRW") is incorporated under the District of Columbia Non-Profit Corporation Act. Its principal office is located in Arlington, Virginia.

2. TWRW was formed on June 14, 1977, to absorb and carry forward the courtroom and legislative advocacy activities conducted by two other nonprofit organizations, Taxation with Representation ("TWR") and the Taxation with Representation Fund ("TWR Fund"). The TWR Fund was formerly known as Tax Analysts and Advocates; its name was changed on June 17, 1978 by a formal resolution adopted at the annual meeting of its board of directors.

3. The TWR Fund is classified by the Internal Revenue Service as a tax exempt charitable and educational group under section 501(c)(3) of the Code. It engages in public interest tax-related litigation and publishes a weekly journal on federal tax matters. TWR is classified by the Internal Revenue Service as a tax exempt social welfare organization under section 501(c)(4) of the Code. It is principally engaged in representing the interests of ordinary taxpayers at legislative and administrative hearings.

4. Under current law, contributions to the TWR Fund for its courtroom advocacy work are tax deductible, but contributions to TWR for its legislative advocacy are not. In addition, foundations may support the courtroom advocacy of the TWR Fund, but may not, without penalty, support the legislative advocacy of TWR.

5. The Internal Revenue Service ("IRS"), an agency of defendant United States of America, has ruled that TWRW does not qualify for exempt status under section 501(c)(3) of the Code. The IRS has rejected TWRW's request for exempt status under section 501(c)(3) of the Code solely because of TWRW's stated purpose of attempting to influence legislation.

6. On June 27, 1977, TWRW filed with the IRS a completed application for recognition of exemption under section 501(c)(3) of the Code. On October 6, 1977, the IRS requested additional information to complete its consideration of the application. This information was timely furnished to the IRS on November 1, 1977. The IRS denied recognition of exemption under section 501(c)(3) of the Code on November 25, 1977.

7. On December 13, 1977, TWRW filed a timely protest of the IRS denial and requested a conference on the exemption application with the IRS. On January 10, 1978, a conference was held between Thomas F. Field of TWRW and Edward K. Karcher of the Exempt Organizations Division of the IRS.

8. On February 14, 1978, the IRS issued a final adverse ruling denying TWRW exempt status under section 501(c)(3) of the Code.

9. If TWRW were exempt from federal income taxation under section 501(c)(3) of the Code, it would be eligible to receive contributions which would be tax-deductible to donors under sections 170(c)(2), 2055(a)(2), 2106(a)(2) and 2522 of the Code.

10. Based on the experience of TWR and the TWR Fund, the tax-deductibility of individual contributions means that they will be approximately 23 percent larger in the aggregate, than they are in the absence of tax-deductibility.

11. If TWRW were exempt from federal income taxation under section 501(c)(3) of the Code, private foundations would be entitled to provide funds for the general support of TWRW's activities without incurring tax liability under section 4945(d)(5) of the Code as a result of their contributions. In practice, foundations will not make grants to TWRW if there is any possibility of incurring section 4945 tax penalties.

12. TWRW's efforts to raise funds to support its activities are severely hampered by the IRS denial of section 501(c)(3) status.

13. TWRW would qualify for section 501(c)(3) status except for its stated purpose of attempting to influence legislation.

Respectfully submitted,

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August 11, 1978

UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 78–0834

TAXATION WITH REPRESENTATION OF WASHINGTON,
PLAINTIFF

v.

W. MICHAEL BLUMENTHAL, JEROME KURTZ,
THE UNITED STATES OF AMERICA, DEFENDANTS.

AFFIDAVIT

THOMAS F. FIELD, being duly sworn deposes and says as follows:

I. The Organization and Functions of TWRW

1. I am the President and chief executive officer of Taxation with Representation of Washington ("TWRW") and have held that position since TWRW was organized on June 14, 1977.

2. TWRW is a nonprofit corporation organized for charitable and educational purposes. It deals solely with federal tax issues. Its goal is to make sure that the general public is represented by skilled professionals when tax issues are under consideration in Congress, in the Executive Branch, and the courts. The tax laws are now so complex that ordinary citizens find it difficult to speak out intelligently on tax matters. TWRW seeks to ease the resulting problems by encouraging tax professionals to speak out on behalf of the general public.

3. If TWRW achieves tax exempt status, it will seek out persons who wish to represent the general public on a *pro bono* basis, including members of the tax bar, public finance economists, teachers of accounting and tax law, and other tax specialists. It will then alert them as soon as tax issues arise in their areas of expertise. It will help them to prepare and publicize testimony and to follow up their presentations with informal contacts and discussions to insure that their message is heard. Particular attention will be devoted

to administrative proceedings and to legislative hearings at which the general public is not otherwise represented.

4. Another activity of the organization will be to assist in the prosecution of tax suits in which the public interest is at stake. TWRW will retain counsel to litigate tax questions when it appears that it is in the public interest to obtain judicial review of these questions, and when it appears that those questions will otherwise not reach the courts. Suits will be selected on the basis of their possible precedential significance and their likely contribution to the improvement of the federal tax system. TWRW will comply fully with section 501(c)(3)'s ban on political activities.

5. TWRW has not made and does not plan to make, an election under sections 501(h) and 4911 of the Code. Such an election might require us to accept restrictions which are not justified or authorized under the First Amendment of the Constitution, on our right to communicate with our contributors and members regarding matters of legislative interest. Sections 501(h) and 4911 also fail to define with any narrow specificity such terms as "legislative activities" and "taxable expenditures". For this reason, an election under section 501(h) might require us to impose prior restraints on the publication of articles in our weekly tax news-magazine, Tax Notes. An election under section 501(h) might also require us to accept limitations on our legislative activities which we believe are unconstitutional and which are not imposed on similarly situated tax exempt organizations, such as, for example, trade associations, fraternal societies, labor unions, veterans organizations, and in practice, churches. In addition, the income of an organization such as Taxation with Representation of Washington normally fluctuates widely from year to year. Therefore as a practical matter, a percentage test—such as that in section 501(h)—to determine the permissable level of spending on legislative activities is unworkable.

II. TWRW'S PREDECESSOR ORGANIZATIONS

6. TWRW was incorporated on June 14, 1977 under the District of Columbia Non-Profit Corporation Act to absorb and carry forward the courtroom and legislative activities

conducted by two other non-profit corporations, Taxation with Representation (TWR) and the Taxation with Representation Fund (TWR Fund) [formerly Tax Analysts and Advocates]. I serve as executive director of both TWR and the TWR Fund.

7. TWR and the TWR Fund are separately incorporated organizations. They originated as a result of discussions in 1968 and 1969 between a group of tax attorneys and public finance economists (most of whom were then employed by the U.S. government) regarding the need for better representation of the public interest in federal tax matters. TWR is classified by the Internal Revenue Service as a tax exempt social welfare organization under section 501(c)(4) of the Internal Revenue Code ("the Code"). The TWR Fund is classified by the Internal Revenue Service as a tax exempt charitable and educational group under section 501(c)(3) of the Code.

8. In the period 1968-1969, private interest groups seeking changes in tax laws, rulings, and regulations, were regularly represented in formal and informal hearings before Congress, the Internal Revenue Service, and the Department of the Treasury. In addition, such groups were generally able to challenge adverse administrative determinations in the courts. In 1968-1969, there was no comparable public interest representation in connection with federal tax matters.

9. It was clear during these preliminary discussions in 1968 and 1969 that some of the activities needed to insure better public interest representation in tax matters could be performed by a charitable and educational group which would be eligible for foundation support and qualified to receive tax deductible contributions. Among these functions were (a) providing timely, accurate information to the news media and tax practitioners and (b) representing the public interest before the courts. Accordingly, the TWR Fund was organized to perform these functions.

10. It also seemed apparent during these preliminary discussions that representation of the public interest before Congress was not an activity that could be performed, under existing federal tax law, by a charitable and educational

group eligible for foundation support and qualified to receive deductible charitable contributions. Accordingly, a separate charitable and educational group, Taxation with Representation, was formed to represent the public interest at legislative hearings on tax matters.

11. Although formed to serve the same basic goal—better representation of the public interest in federal tax matters—as a result of the requirements of the Code, TWR and the TWR Fund:

a. were separately incorporated
b. maintain separate books and bank accounts
c. file separate tax returns and annual reports, and
d. derive their funds from separate sources.

12. Both TWR and the TWR Fund are financed through public contributions. Yet, under current law, contributions to the TWR Fund for its courtroom advocacy work are tax deductible, but contributions to TWR for its legislative activities are not. As a result, contributions to TWR from the public average approximately 23 percent less per contributor than contributions to the TWR Fund. In addition, foundations may support the courtroom advocacy of the TWR Fund but may not, without penalty, support the legislative advocacy of TWR.

III. THE FORMATION OF TWRW

13. The continued maintenance of two separate organizations to express a single charitable goal imposes heavy costs on both organizations and wastes scarce charitable funds. An undesired and artificial division of activities between TWR and the TWR Fund, with all the inefficiencies which naturally flow from such an arrangement, was forced upon our organizations, even though a single entity would undoubtedly promote the exempt purposes better.

14. These heavy expenses and duplication of effort would be eliminated if the charitable functions of these two groups could be united in a single organization. For that reason, Taxation with Representation of Washington was formed. TWRW is designed to absorb the public interest law firm function of the TWR Fund (consisting primarily of courtroom litigation and the representation of ordinary taxpay-

ers at administrative hearings before the IRS) and the public interest lobbying functions of TWR (consisting largely of representation of ordinary taxpayers at legislative hearings before Congress).

15. After incorporation, TWRW filed with the Internal Revenue Service a completed application for exemption under section 501(c)(3) of the Code. At the request of the IRS, additional information was furnished to allow the IRS to complete its consideration of the application. On November 25, 1977, the IRS rejected TWRW's application, finding that a substantial portion of the organization's activities might be devoted to legislative advocacy. TWRW then filed a timely protest of this denial, and a conference was held with the IRS. On February 14, 1978, the IRS issued a final adverse ruling as to TWRW's exempt status under section 501(c)(3) on the ground that legislative advocacy might constitute a substantial portion of the organization's activities.

16. If TWRW were exempt from federal income tax under section 501(c)(3) of the Code, it would be eligible to receive contributions which would be tax-deductible to donors. Based on the experience of TWRF and TWR, this means that individual contributions would be approximately 23 percent greater than otherwise. In addition, private foundations would be entitled to provide funds for the general support of TWRW's activities without incurring tax liability under section 4945(d)(5) of the Code as a result of their contributions. As a practical matter, foundations cannot support TWRW's activities at all, and other taxpayers are much less likely to make a non-tax-deductible contribution than they would be to make a tax-deductible one, since the after tax cost of a contribution to the donor is significantly affected by tax deductibility.

17. The character of the proposed activities of Taxation with Representation of Washington can be gauged by an examination of the existing activities of Taxation with Representation and the Taxation with Representation Fund.

IV. THE ACTIVITIES OF TAXATION WITH REPRESENTATION

18. Taxation with Representation was incorporated as a public interest taxpayers' lobby on July 14, 1970, pursuant to the District of Columbia Non-Profit Corporation Act.

The group's articles of incorporation state that Taxation with Representation is designed:

> To promote the common good and general welfare of the people of the United States by appearing on behalf of the public at legislative and administrative hearings on Federal tax matters and by assisting members of the academic community in presenting their views at such hearings.

19. Taxation with Representation does not support any political party or candidate, nor does it participate in political campaigns. It concentrates on helping public spirited tax professionals express their own views on federal tax questions. Beginning in 1975, TWR expanded its legislative activities by taking positions on legislation in its own name in addition to assisting others who were doing so. The group's work is in all respects charitable and educational, and—but for the fact that the group comments on legislation—it would undoubtedly qualify for charitable and educational status within the scope of section 501(c)(3) of the Code.

20. Membership dues and contributions constitute substantially all of Taxation with Representation's receipts, aside from minor amounts received sporadically from the sale of publications. The group now has approximately 6,000 members drawn from a wide cross section of the public.

21. TWR's staff consists of Thomas F. Field, Executive Director; Thomas J. Reese, Legislative Director; and Howard J. Hoffman, Staff Writer. All contribute their services without compensation. The group's current budget calls for legislative activity expenditures of approximately $25,000 during the fiscal year ending June 30, 1979.

22. In seeking to represent the public interest before Congress, TWR has attempted to influence legislation which was opposed to the interests of the following groups, among others:

— corporations and other business entities which may, for federal income tax purposes, deduct lobbying expenses (other than grass-roots appeals to the general public) whenever legislation has a direct relationship to their business interests;

— tax exempt trade associations, chambers of commerce and similar organizations, payments to which are deductible even when they are attributable to lobbying, if the issue is directly related to the members' business interests;
— tax-exempt labor and agricultural organizations, payments to which are deductible even when they are attributable to lobbying, if the issue is related to the members' business interests;
— veterans organizations, contributions to which are tax-deductible under Code sections 170, 2055, and 2522 without regard to the extent of the lobbying in which the organization is engaged;
— fraternal societies, contributions to which are tax-deductible under Code sections 170 and 2522 without regard to the extent of the lobbying in which the organization is engaged.

Because of fund raising difficulties because contributions to TWR are not tax-deductible to donors, the above-listed organizations can almost invariably afford to spend much more in presenting their points of view on tax legislation than can TWR.

23. Taxation with Representation's financial difficulties are primarily attributable to the fact that it is not qualified to receive tax deductible charitable contributions. Nondeductibility for federal tax purposes of contributions means that the net after-tax cost of a contribution to TWR is greater than the net after-tax cost of an identical amount to a private interest lobby serving the payor's business or other interests. In addition, the nondeductibility of contributions means that potential members are wary about joining Taxation with Representation, since the deductibility of contributions has come to be regarded by many individuals as a government seal of approval for charitable groups.

V. THE ACTIVITIES OF THE TAXATION WITH REPRESENTATION FUND

24. The Taxation with Representation Fund was incorporated as Tax Analysts and Advocates, a charitable and educational group, on July 14, 1970, pursuant to the District of

Columbia Nonprofit Corporation Act. The group's name was changed to the Taxation with Representation Fund on June 17, 1978.

25. The group's articles of incorporation state that the Taxation with Representation Fund is designed:

> To improve the understanding of the Federal tax system by insuring that the press has access to timely, accurate, impartial information regarding Federal tax matters, including the results of scholarly work by tax lawyers, economists, and accountants.

26. Thus, the activities of the TWR Fund have a dual purpose: to make specialized tax information service available to the news media and tax practitioners through its weekly publication *Tax Notes* and to promote the public interest in tax matters through legal activity, including litigation.

27. The TWR Fund has attracted considerable financial support, about 60 percent of which has been in the form of foundation grants and most of the remainder of which has consisted of donations and publishing receipts. The group's current budget calls for expenditures of approximately $200,000 during the fiscal year ending June 30, 1979. The ability to raise funds of this magnitude from a variety of donors, including the foundation community, is directly attributable to the organization's status as a charitable and educational group within the meaning of section 501(c)(3) of the Code and its consequent qualification to receive contributions which are tax-deductible under section 170 of the Code.

28. When conducting its charitable and educational activities in the federal tax area, the TWR Fund expresses viewpoints opposed by the following groups, among others:

> — trade associations, chambers of commerce, and similar business associations, payments to which provide tax deductions to the payors or contributors under the provisions of section 162 of the Code, and which are free to carry on unlimited legislative activities (other than grassroots appeals to the general public) whenever legislation has a direct relationship to the payor's or contributor's business interests;

— labor and agricultural organizations, dues and contributions to which provide tax deductions to the payors or contributors under the provisions of section 162 of the Code, and which are free to carry on unlimited legislative activities (other than grassroots appeals to the general public);
— veterans organizations, contributions to which provide tax deductions to the contributors under sections 170, 2055, and 2522 of the Code, and which are free to use these contributions, without limit, for legislative activities, and
— fraternal beneficiary societies, contributions to which provide tax deductions to the contributors under sections 170, and 2522 of the Code, and which are free to use these contributions, without limit, for legislative activities, provided that they do not make themselves subject to the Code's restrictions on legislative activities by accepting a bequest which is deductible under sections 2055 and 2106 of the Code.

29. Since the federal tax law is so overwhelmingly statutory in nature, a group seeking to serve the general public interest in federal tax matters is at a grave disadvantage if it is prevented from speaking out freely on legislative proposals. The TWR Fund is prevented from pursuing its charitable goals in the legislative arena by the restrictions in section 501(c)(3) of the Code. Despite these problems, the TWR Fund has sought to comply with section 501(c)(3) in all respects.

30. These restrictions gravely hamper the TWR Fund by making it impossible to bring the group's professional resources to bear during the critical period when tax rules are being formulated in Congress. In contrast, other tax exempt groups that enjoy the benefit of tax deductibility for their receipts are not subject to similar restrictions on their participation in Congressional hearings and debates.

VI. EXHIBITS

31. Attached hereto and marked exhibits A, B, and C, respectively, are true and correct copies of the following documents:

A. TWRW's Articles of Incorporation.
B. TWRW's Application for Exemption under Section 501(c)(3).
C. The Final Internal Revenue Service Ruling Rejecting TWRW's Application for Exemption.

VII. CONCLUSION

32. TWR and the TWR Fund are dual expressions of a common charitable impulse. The fields of interest of the two organizations—federal tax policy and its effects—are also identical. The purposes and operations of the organizations differ only in that TWR attempts to influence legislation while the TWR Fund does not. By seeking to combine the legislative and courtroom advocacy activities of these two groups, we have sought to lessen the heavy costs on both groups and to avoid waste of scarce charitable funds.

/s/_____
THOMAS F. FIELD

State of Virginia)
County of Arlington) SS

Subscribed and sworn to before me, a notary public, this ___ day of ___, 1978.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES:

OFFICE OF RECORDER OF DEEDS, D.C.
Corporation Division
Sixth and D Streets, N.W.
Washington, D.C. 20001

CERTIFICATE

THIS IS TO CERTIFY that all provisions of the District of Columbia Non-profit Corporation Act have been complied with and ACCORDINGLY this Certificate of Incorporation is hereby issued to the TAXATION WITH REPRESENTATION OF WASHINGTON as of the date hereinafter mentioned.

Date June 14, 1977

PETER S. RIDLEY,
Recorder of Deeds, D.C.

/s/ _____

DAVID H. COLE
Superintendent of Corporations

Government of the District of Columbia *J-0129-75*
Form RD-C 55
Oct. 1962

OFFICE OF RECORDER OF DEEDS
CORPORATION DIVISION
WASHINGTON

THIS IS TO CERTIFY *that the pages attached hereto constitute a full, true, and complete copy of* certificate and articles of incorporation of Taxation With Representation of Washington, as received and filed June 14, 1977.

As the same appears of record in this office.

In Testimony Whereof,
I have hereunto set my hand and caused the seal of this office to be affixed, this the 20th day of June A.D. 1977

PETER S. RIDLEY,
Recorder of Deeds, D.C.

/s/ _____
DAVID H. COLE
Superintendent of Corporations, D.C.

P-3644

ARTICLES OF INCORPORATION
OF
TAXATION WITH REPRESENTATION OF WASHINGTON

Pursuant to the District of Columbia
Nonprofit Corporation Act

* * * * *

To: The Recorder of Deeds
District of Columbia
Washington, D.C.

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators of a corporation, adopt the following Articles of Incorporation for such corporation pursuant to the District of Columbia Nonprofit Corporation Act:

FIRST: *Name.* The name of the corporation is TAXATION WITH REPRESENTATION OF WASHINGTON.

SECOND: *Duration.* The corporation's period of existence is perpetual.

THIRD: *Purposes and Powers.* (a) The purposes for which the corporation is organized and shall operate are as follows:

> To promote charitable activities within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any future United States Internal Revenue Law) and the regulations pertaining thereto as they now exist or may hereafter be amended.

(b) In pursuance of its purposes, the corporation is authorized and empowered to do any and all lawful acts and things consistent therewith including, but without limitation:

> Relief of the poor, the distressed, and the underprivileged; and the defense of human and civil rights secured by law; through representation of the broad public interest in the courts and in Congress.

(c) In pursuance of the foregoing purposes, as limited, and for no others, the corporation shall have power:

(1) To receive, administer, maintain, use and employ funds and property, real and personal, exclusively for the promotion of charitable purposes.
(2) To accept, acquire, receive, take, hold by bequest or devise, grant, donate, purchase, exchange, lease, and transfer (by judicial order of decree or otherwise) any property, both real and personal, of whatever kind, nature, or description and wherever situated;
(3) To improve, sell, exchange, convey, mortgage, lease, transfer, or otherwise dispose of any such property, both real and personal, as the objects and purposes of the corporation may require, subject to such limitations as may be prescribed by law;
(4) To borrow money, and, from time to time, to make, accept, endorse, execute, and issue bonds, debentures, promissory notes, bills of exchange, and other obligations of the corporation for moneys borrowed or in payment for property acquired or for any of the other purposes of the corporation, and to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement, or other instrument of trust, or by any other lien upon, assignment of, or agreement in regard to all or any part of the property, rights, or provisions of the corporation wherever situated, whether now owned or hereafter to be acquired;
(5) To invest and reinvest its funds in such partnership interests, stock (common or preferred), bonds, debentures, mortgages, or in such other associations, securities and property as its Board of Directors shall deem advisable, subject to the limitations and conditions contained in any bequest, devise, grant, or gift (provided that such limitations and conditions are not in conflict with the purposes of the corporation);
(6) To have offices and to promote and carry out its objects and purposes in the District of Columbia, in the states and possessions of the United States, and in foreign countries.
(7) To enter into, make, perform and carry out any contracts or agreements in furtherance of any of its objects and purposes, without limit as to amount, with any person, firm, committee, association or corporation, in any part of the world; and
(8) In general, and subject to such limitations and conditions as are or may be prescribed by law, to exercise

such other powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes set forth above, or necessary or incidental to the powers so conferred, or conducive to the attainment of the objects and purposes of the corporation.

(d) The foregoing purposes and powers are each and all subject to the following additional limitations:

(1) This corporation is a nonprofit corporation organized without capital stock;

(2) No part of the net earnings of the corporation shall inure to the benefit of any director or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to the corporation in the course of effecting one or more of its purposes), and no director or officer of the corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation;

(3) The corporation shall not participate in, or intervene in (including the publishing or distributing of statements) any political campaigns on behalf of or in opposition to any candidate for public office, nor shall it operate a social club for the benefit of its members or carry on business with the general public in a manner similar to organizations operated for profit; and

(4) Notwithstanding any other provision of these articles, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any future United States Internal Revenue Law) and the regulations pertaining thereto as they now exist or may hereafter be amended. However, to the extent that any provision of Section 501(c)(3) of the Internal Revenue Code violates the provisions of the United States Constitution, the corporation shall not be required to abide by such unconstitutional provision.

FOURTH: *Members.* The corporation shall have members. The membership of the corporation may be divided

into such classes as shall be provided for in the By-Laws, but no member shall have the right to vote.

FIFTH: *Directors.* (a) The corporation shall be controlled by a Board of Directors who shall have the sole voting power and shall have all of the authority of the corporation and may take any action permitted by the District of Columbia Nonprofit Corporation Act.

(b) The Board of Directors of the corporation shall be elected annually by the directors then in office, at the time and in the manner provided in the By-Laws of the corporation.

(c) Vacancies arising in the Board of Directors from any cause whatever, including death, resignation and any increase in the number of directors, shall be filled by the remaining directors then in office, even though less than a quorum.

(d) All matters pertaining to directors, including resignation, change of number and filling of vacancies, shall be regulated by the By-laws to the extent that provision therefore is not made herein.

SIXTH: *Internal Affairs.* (a) To the extent not set forth herein, the internal affairs of the corporation shall be regulated by its Board of Directors in accordance with the By-Laws.

(b) No directorship or officership in this corporation shall be assignable inter vivos, nor shall any directorship, or officership in this corporation pass to any personal representative, heir, or devisee.

(c) The private property of the directors and officers of the corporation shall not be subject to payment of the corporate debts to any extent whatsoever.

SEVENTH: *Dissolution.* Upon the liquidation, dissolution and winding up of the business and affairs of the corporation, the Board of Directors shall pay or make provision for the payment of all liabilities of the corporation. The corporation's remaining assets shall then be distributed, as the Board of Directors shall determine, exclusively to one or more charitable, scientific, literary, or educational organizations described in Section 170(b)(1)(A) of the Internal Revenue Code of 1954 (other than clauses (vii) and (viii)

thereof), each of which has been in existence and so described for a continuous period of at least 60 calendar months. Any remaining assets not so disposed of by the Board of Directors shall be distributed by the United States District Court for the District of Columbia exclusively to one or more organizations of the type described in the preceding sentence.

EIGHTH: *Address and Agent.* The address of the initial registered office of the corporation is Apartment 623, 1225 New Hampshire Avenue, N.W., Washington, D.C. 20036, and the name of its initial registered agent at such address is John F. Winslow.

NINTH: *Initial Directors.* The number of directors constituting the initial Board of Directors is 3 and the names and addresses of the persons who are to serve as the initial directors until the first annual meeting or until their successors shall be elected and qualify are:

THOMAS F. FIELD
2369 North Taylor Street
Arlington, Virginia 22207

THOMAS J. REESE
1225 Otis Street, N.E.
Washington, D.C. 20017

EDWARD M. QUINN
8 Alden Place
Hartsdale, New York 10530

TENTH: Incorporators. The name and address of each incorporator is:

MARY ANN MILLER
844 S Frederick St.
Arlington Va 22204

MARY E. NISSEN
6238 Washington Blvd.
Arlington Va. 22205

illegible

Date:_____
STATE OF VIRGINIA SS
COUNTY OF ARLINGTON

I, _____, a Notary Public, hereby certify that on the ____ day of ____, 1977, personally appeared before me _____ and _____, who signed the foregoing document as incorporators, and acknowledged the same as their deed and act.

/s/ ob_____
Notary Public

Form **1023**
(Rev. November 1972)
Department of the Treasury
Internal Revenue Service

Application for Recognition of Exemption
Under Section 501(c)(3) of the Internal Revenue Code

To be filed in the District in which the organization has its principal office or place of business.

This application, when properly completed, shall constitute the notice required under section 508(a) of the Internal Revenue Code in order that organizations may be treated as described in section 501(c)(3) of the code, and the notice under section 508(b) appropriate to those organizations claiming not to be private foundations within the meaning of section 509(a).

Part I.—Identification (See instructions)

1 Full name of organization	2 Employer identification number (If none, attach Form SS-4)
TAXATION WITH REPRESENTATION OF WASHINGTON	Form SS-4 Attached

3(a) Address (number and street)
2369 N. Taylor Street

3(b) City or town, State and ZIP code	4 Name and phone number of person to be contacted
Arlington, Va. 22207	Thomas V. Field (703) 522-1800

5 Month the annual accounting period ends	6 Date incorporated or formed	7 Activity Codes (see instructions)		
June 30	June 14, 1977	430	460	480

Part II.—Organizational Documents (See instructions)

1 Attach a conformed copy of the organization's creating instruments (articles of incorporation, constitution, articles of association, deed of trust, etc.). Copy attached

2 Attach a conformed copy of the organization's by-laws or other rules for its operation. Copy attached

3 If the organization does not have a creating instrument, check here (See instructions) . . . . . ☐

Part III.—Activities and Operational Information (See instructions)

1 What are or will be the organization's sources of financial support? List in order of magnitude. If a portion of the receipts is or will be derived from the earnings of patents, copyrights, or other assets (excluding stock, bonds, etc.), identify such item as a separate source of receipt. Attach representative copies of solicitations for financial support.

Taxation with Representation of Washington's sources of support will be in the form of contributions from members, from the tax bar and from the general public.

No materials have as yet been prepared for purposes of soliciting funds.

2 Describe the organization's fund-raising program and explain to what extent it has been put into effect. (Include details of fund-raising activities such as selective mailings, formation of fund raising committees, use of professional fund raisers, etc.)

Taxation with Representation of Washington has not yet engaged in any fund raising activities. Any work involved in a fund raising campaign will be handled on a volunteer basis. No fund raising committees have been formed, nor does Taxation with Representation of Washington intend to use professional fund raisers or enter into any fund raising agreement.

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and I have examined this application, including the accompanying statements, and to the best of my knowledge it is true, correct and complete.

Thomas V. Field — President — June 27, 1977
(Signature) (Title or authority of signer) (Date)

Part III.—Activities and Operation Information (Continued)

3 Give a narrative description of the activities presently carried on by the organization, and also those that will be carried on. If the organization is not fully operational, explain what stage of development its activities have reached, what further steps remain for the organization to become fully operational, and when such further steps will take place. The narrative should specifically identify the services performed or to be performed by the organization. (Do not state the purposes of the organization in general terms or repeat the language of the organizational documents.) If the organization is a school, hospital, or medical research organization, include sufficient information in your description to clearly show that the organization meets the definition of that particular activity that is contained in the instructions for Part VII–A on page 3 of the instructions.

Taxation with Representation of Washington (TWRW) is a public interest organization that deals solely with federal tax issues. Its goal is to make sure that the general public is represented by skilled professionals when tax issues are under discussion in Congress, in the Executive Branch or before the courts.

The tax laws are now so complex that ordinary citizens find it difficult to speak out intelligently on tax matters. TWRW seeks to ease the resulting problems by encouraging tax professionals to speak out on behalf of the public.

TWRW seeks out persons who wish to represent the general public, including members of the tax bar, public finance economists, teachers of accounting and tax law and other tax specialists. It alerts them as soon as tax issues arise in their areas of expertise. It then helps them to prepare and publicize testimony and to follow up their presentation with informal contacts and discussions to insure that their message is heard. Particular attention is devoted to administrative proceedings and to legislative hearings at which the general public is not otherwise represented.

Another activity of the organization is to assist in the prosecution of tax suits in which the public interest is at stake. TWRW retains counsel to litigate tax questions when it appears that it is in the public interest to obtain judicial resolution of these questions, and when it appears that those questions will otherwise not reach the courts. Suits are selected on the basis of their possible precedential significance and their likely contribution to improvement of the federal tax system.

TWRW has not yet undertaken any litigation.

Part III.—Activities and Operational Information (Continued)

4 The membership of the organization's governing body is:

(a) Names, addresses, and duties of officers, directors, trustees, etc.	(b) Specialized knowledge, training, expertise, or particular qualifications
Thomas F. Field, President, 2369 North Taylor Street, Arlington, Va. 22207 Mary Ann Miller, Treasurer, 844 S. Frederick Street, Apt. 242-A, Arlington, Va. 22204 Shirley Grossman, Secretary, 2023 Rhode Island Avenue, McLean Va. 22101	Attorney

(c) Do any of the above persons serve as members of the governing body by reason of being public officials or being appointed by public officials? ☐ Yes ☒ No

If "Yes," please name such persons and explain the basis of their selection or appointment.

(d) Are any members of the organization's governing body "disqualified persons" with respect to the organization (other than by reason of being a member of the governing body) or do any of the members have either a business or family relationship with "disqualified persons"? (See specific instructions 4(d).) ☐ Yes ☒ No

If "Yes," please explain.

5 Does the organization control or is it controlled by any other organization? ☐ Yes ☒ No

Is the organization the outgrowth of another organization, or does it have a special relationship to another organization by reason of interlocking directorates or other factors? ☒ Yes ☐ No

If either of these questions is answered "Yes," please explain.

TWRW is designed as the successor to two separate organizations: Taxation with Representation and Tax Analysts and Acvocates. Both organizations were formed under the District of Columbia Non-Profit Corporation Act. The purpose of TWRW is to assume and continue the existing court and congressional advocacy functions of TWR and TA/A.

6 Is the organization financially accountable to any other organization? ☐ Yes ☒ No

If "Yes," please explain and identify the other organization. Include details concerning accountability or attach copies of reports if any have been rendered.

7 What assets does the organization have that are used in the performance of its exempt function? (Do not include income producing property.) If any assets are not fully operational, explain what stage of completion has been reached, what additional steps remain to be completed, and when such final steps will be taken.

None. Fund raising will be commenced when our exemption application is approved.

Part III.—Activities and Operatio nformation (Continued)

8 (a) What benefits, services, or products will the organization provide with respect to its exempt function?

TWRW will represent the public interest before the Congress, the Executive Branch and the courts. TWRW will assist in preparing testimony to be used before administrative and legislative hearings. TWRW also assists in preparing litigation.

(b) Have the recipients been required or will they be required to pay for the organization's benefits, services, or products? . . . . . ☐ Yes ☒ No

If "Yes," please explain and show how the charges are determined.

9 Does or will the organization limit its benefits, services or products to specific classes of individuals? . . . ☐ Yes ☒ No

If "Yes," please explain how the recipients or beneficiaries are or will be selected.

10 Is the organization a membership organization? . . . . . ☒ Yes ☐ No

If "Yes," complete the following:

(a) Please describe the organization's membership requirements and attach a schedule of membership fees and dues.

See attached schedule

(b) Are benefits limited to members? . . . . . ☐ Yes ☒ No

If "No," please explain.

(c) Attach a copy of the descriptive literature or promotional material used to attract members to the organization. No such material has been prepared.

11 Does or will the organization engage in activities tending to influence legislation or intervene in any way in political campaigns? . . . . . ☒ Yes ☐ No

If "Yes," please explain.

TWRW will not seek to intervene in political campaigns. TWRW seeks to make sure that the public interest in federal tax questions is represented before Congress. TWRW will assist skilled professionals in testifying before Congress and at administrative hearings.

Part IV.—Statement as to Private Foundation Status (See instructions)

1 Is the organization a private foundation? . . . . . ☐ Yes ☒ No

2 If question 1 is answered "No," indicate the type of ruling being requested as to the organization's status under section 509 by checking the applicable box below:

☐ Definitive ruling under section 509(a)(1), (2), (3), or (4) — complete Part VII.

☒ Advance or extended advance ruling under section 509(a)(1) or (2) — See instructions.

3 If question 1 is an answered "Yes," and the organization claims to be a private operating foundation, check here ☐ and complete Part VIII.

PAGE 4A - Answer to question 10a, Part III, Form 1023

Membership Schedule for
TWRW

The membership of Taxation with Representation of Washington is divided into three classes: National Committee Members, Consultant Members, and Sustaining Members. National Committee membership is extended by the Board of Directors of the Corporation to distinguished persons who are willing to permit the use of their names in connection with the corporation's activities. Consultant membership is extended to persons who are willing to advise the corporation regarding the conduct of its affairs. Sustaining membership is granted to those who contribute funds or services to the corporation. By making a contribution, however small, anyone may therefore become a member of the corporation. No members have the right to vote.

SCHEDULE F.—Litigating anizations (Public Interest Law Firms ' Similar Organizations)

1 Will the organization conform to the guidelines for organizations engaged in litigation activities issued by the Internal Revenue Service in Rev. Proc. 71-39, C.B. 1971-2, 575? ☒ Yes ☐ No

If "No," please explain.

2 What is the organization's area of public interest or concern?

TWRW's area of public concern is in the field of tax law where it seeks to represent the public interest in the courts and before Congress.

3 Is the organization set up primarily to try the case of a particular person or prosecute a particular cause of action? ☐ Yes ☒ No

If "Yes," please explain.

4 What are the organization's criteria for selection of cases? TWRW shall not conduct any litigation unless such litigation (1) can reasonably be said to be in representation of a broad public interest rather than a private interest and (2) is designed to present a position on behalf of the public at large on matters of public interest.

5 In what cases has the organization started legal proceedings and in what other cases is it preparing to start proceedings? Please describe the legal issues with respect to each case and explain how they relate to the organization's area of concern.

None. The predecessor organization, Tax Analysts and Advocates, however, has litigated suits which have been described in detail in its annual information returns.

6 (a) Composition of the organization's board of directors or trustees

Name and address	Business or Occupation
Thomas F. Field 2369 North Taylor St. Arlington Va. 22207	Attorney
Thomas J. Reese 1225 Otis St. NE. Washington DC 20017	Political Scientist
Edward M. Quinn 8 Alden Pl., Hartsdale NY 10530	Attorney

(b) Will any of the attorneys hired by the organizations be a trustee or member of the board of directors of the organization or be associated in the practice of law with any such trustee or member? ☐ Yes ☒ No

If "Yes," please explain.

7 Does or will the organization share office space with a private law firm? ☐ Yes ☒ No

If "Yes," please explain.

8 Does or will the organization receive fees for its professional services? ☒ Yes ☐ No

If "Yes," please explain.

TWRW shall not accept fees for its services except in accordance with procedures approved by the Internal Revenue Service. In general, the organization does not expect that its litigation will produce fees.

INTERNAL REVENUE SERVICE
Washington, D.C. 20224
Date: Feb ____ 1978

DEPARTMENT OF THE TREASURY
Employer Identification Number:
Form Number: 1120
Tax Years: 1978
Person to Contact: Edward Karcher
Contact Telephone Number: (202) 566-3201

Taxation with Representation
of Washington
2369 North Taylor Street
Arlington, Virginia 22207

Dear Taxpayer:

This is a final adverse ruling as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse ruling was made for the following reason(s): You are not organized or operated exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Code, since your stated purposes include attempting to influence legislation, and legislative advocacy may constitute a substantial part of your activities.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the years shown above. These returns should be filed with your key District Director for exempt organization matters within 30 days from the date of this letter unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because a petition for declaratory judgment has been filed under Code section 7428. Returns for subsequent tax years should be filed with the appropriate service center indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory

judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Court of Claims, or the United States District Court for the District of Columbia must be filed within 90 days from the date this ruling was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

/s/ _____

E.D. COLEMAN
Chief, Exempt Organizations
Technical Branch

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 78–0834

TAXATION WITH REPRESENTATION OF WASHINGTON, PLAINTIFF

v.

W. MICHAEL BLUMENTHAL, ET AL., DEFENDANTS

DEFENDANTS' STATEMENT OF MATERIAL FACTS NOT GENUINELY IN DISPUTE

Pursuant to Rule 1-9(e) of the Rules of this Court, defendants hereby state the material facts which they believe are not genuinely in dispute in this action.

1. Plaintiff, Taxation with Representation of Washington, is an organization, one of whose primary purposes is to engage in substantial lobbying within the meaning of Sections 501(c)(3) and 501(h) of the Internal Revenue Code of 1954 ("the Code"), as amended, 26 U.S.C., Sections 501(c)(3) and 501(h).

2. On February 14, 1978, the Internal Revenue Service issued a final adverse determination in response to plaintiff's administrative application for recognition of initial qualification as an organization organized and operated exclusively for exempt purposes within the meaning of that section.

3. The sole ground for this adverse ruling is plaintiff's refusal to comply with the express statutory requirement of Section 501(c)(3) that organizations exempt under that section may not engage in substantial lobbying.

4. Plaintiff has exhausted its administrative remedies.

Respectfully submitted,

/s/ _____

JOHN J. MCCARTHY
DONALD J. GAVIN
JOHN M. CUNNINGHAM
Attorneys
Tax Division
Department of Justice
Washington, D.C. 20530
Telephone: (202) 739-2509

Of Counsel:

EARL J. SILBERT
United States Attorney
for the District of Columbia

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Civil Action No. 78-0834

TAXATION WITH REPRESENTATION OF WASHINGTON, PLAINTIFF,

v.

W. MICHAEL BLUMENTHAL, ET AL., DEFENDANTS.

PLAINTIFF'S RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS NOT GENUINELY IN DISPUTE.

Pursuant to Rule 1–9(e) of the Rules of this Court, plaintiff notes that defendants have not objected or otherwise responded to its statement of material facts not genuinely in dispute, filed August 11, 1978, and responds as follows to the defendants' statement of material facts not genuinely in dispute, filed on October 16, 1978:

1. Admits, provided that the term "substantial lobbying" as used by the defendants is understood to refer solely to legislative advocacy intended to advance charitable goals.

2. Admits.

3. Admits.

4. Admits.

Respectfully submitted,

/s/_____

JOHN CARY SIMS
Suite 700
2000 P Street, N.W.
Washington, D.C. 20036
(202) 785-3704

THOMAS F. FIELD

EDWARD M. QUINN
6830 North Fairfax Drive
Arlington, Virginia 22213
(703) 532-1850
Attorneys for Plaintiff

October 24, 1978

APPENDIX A

The Taxation with Representation Fund's Public Charity Ruling under Internal Revenue Code Section 509(a)(2)

DEPARTMENT OF THE TREASURY
DISTRICT DIRECTOR
INTERNAL REVENUE SERVICE

March 22, 1973

Tax Analysts and Advocates, Inc.
2369 North Taylor Street
Arlington, Virginia 22207

Gentlemen:

This modifies our letter of September 24, 1971 in which we stated you would be treated for your first two tax years as an organization which is not a private foundation.

Based on additional information supplied, we have determined you are not a private foundation within the meaning of section 509(a) of the Internal Revenue Code, because you are an organization described in section 509(a)(2).

If your sources of support, or your purposes, character, or method of operation is changed, you must let us know so we can consider the effect of the change on your status.

Sincerely yours,

/s/_____

WILLIAM D. WATERS
District Director

APPENDIX C

Petition by the Editors of *Tax Notes* Magazine Requesting Permission to Publish an Editorial Page, and Response of the Commissioner of Internal Revenue Thereto

TAX ANALYSTS AND ADVOCATES

732 Seventeenth Street, N.W.,
Washington, D.C. 20006
(202) 298-5556

Commissioner of Internal Revenue
Washington, D.C. 20224
Attention: CC:LR:T
November 7, 1975

Dear Sir,

This petition is submitted pursuant to Section 601.601(c) of the Statement of Procedural Rules, 26 C.F.R. Part 601. It requests an amendment of Section 1.501(c)(3) of the Treasury Regulations on Income Tax, relating to the definition of an "action organization". The requested amendment would make it clear that publication of an editorial expressing views on legislative issues in a newspaper published by a charitable and educational organization will not cause the organization to be classified as an "action organization" or subject it to other sanctions under the Internal Revenue Code.

Tax Analysts and Advocates has been ruled to be a public charity under the provisions of Sections 501(c)(3) and 509(a)(2) of the Internal Revenue Code. It publishes a weekly newspaper, Tax Notes, which is designed to assist newspaper reporters and editors throughout the U.S. to understand and report federal tax issues. The goal is to assist newsmen to understand and report tax issues more clearly, so that the public, in turn, will be better informed.

As a result of the restrictions set forth in Section 1.501(c)(3) of the Treasury Regulations on Income Tax, and the related regulations, Tax Analysts and Advocates has

never published an editorial in Tax Notes, and it refrains from publishing any other statement of its opinions on tax issues arising in a legislative context for fear that such publication would result in loss of its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

Tax Analysts and Advocates believes that the existing regulations abridge rights guaranteed by the First Amendment to the Constitution, because they exert a chilling effect on the exercise of free speech, because they are impermissibly vague, and because they result in prepublication censorship. Accordingly, an amendment to these regulations is requested, which will remove the bars to the expression of editorial opinion in our newspaper, Tax Notes, including, *inter alia*, opinion with respect to the merits of pending legislation.

Best regards,

/s/ _____

THOMAS F. FIELD
Executive Director

Internal Revenue Service
Department of the Treasury
Washington, D.C. 20224

Jan. 2, 1976

Mr. Thomas F. Field
Executive Director
Tax Analysts and Advocates
732 Seventeenth St., N.W.
Washington, D.C. 20006

Dear Mr. Field:

This is in response to your letters of November 7 and December 10, requesting amendment of the income tax regulations under section 1.501(c)(3). You requested that the regulations dealing with the definition of an "action organization" be amended to allow a section 501(c)(3) organization to publish editorial opinions on legislative issues in a newspaper published by such organization without jeopardizing its section 501(c)(3) exception.

As you are undoubtedly aware, the present regulations under section 501(c)(3) do not prohibit editorializing *per se*. For example, section 1.501(c)(3)-1(d)(2) and (3) specifically allow a section 501(c)(3) organization to express opinions on controversial issues or advocate particularly positions or viewpoints without jeopardizing its section 501(c)(3) exemption. However, we do recognize that the point at which allowable editorializing becomes attempting to influence legislation is not always easily determined under the present law, and we are sympathetic to the problem encountered in a situation such as that faced by your organization.

You are undoubtedly also aware that this problem has been the subject of recent legislative proposals. A few bills were introduced in the last Congress which would have provided specific guidelines as to the extent a section 501(c)(3) organization can engage in lobbying activity without jeopardizing its exemption. We are informed by the staff of the Joint Committee on Internal Revenue Taxation that this subject is scheduled for further consideration next ses-

sion by the Ways and Means Committee in their Phase II of tax reform.

In view of the Congressional activity on this matter, we believe it would be inappropriate to initiate such a regulation project at this time. However, we are presently reviewing the section 501(c)(3) regulations with a view toward reducing the uncertainty in the lobbying area, as well as addressing other problems under section 501(c)(3).

Sincerely,

/s/ _____

Commissioner

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-1464

September Term, 1981

TAXATION WITH REPRESENTATION OF WASHINGTON, APPELLANT

v.

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL.

APPEAL from the United States District Court for the District of Columbia.

Before: ROBINSON, *Chief Judge*, and WRIGHT, TAMM, MACKINNON, ROBB, WILKEY, WALD, MIKVA, EDWARDS, AND GINSBURG, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration thereof it is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby reversed, and the case is remanded to the District Court for further proceedings consistent with the opinion of this Court filed herein this date.

Per Curiam For the Court

/s/_____

GEORGE A. FISHER
Clerk

Date: March 26, 1982

Opinion for the Court filed by Circuit Judge Mikva.

Dissenting opinion filed by Circuit Judge MacKinnon, in which Circuit Judges Robb and Wilkey concur.

Supreme Court of the United States

No. 81-2338

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL., APPELLANTS

v.

TAXATION WITH REPRESENTATION OF WASHINGTON

APPEAL from the United States Court of Appeals for the District of Columbia Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

October 4, 1982